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NOTE AND COMMENT

THE FAYERWEATHER WILL CASE.—The long and tedious litigation over the famous Fayerweather will, in which a large number of American colleges have been pecuniarily interested, has just been brought to a close by the recent decision of the United States Supreme Court in *Fayerweather v. Ritch*, 25 Sup. Ct. Rep. 58. The heirs of Daniel B. Fayerweather have exhausted every resource open to them in both the state and federal courts, and the right of the colleges to the Fayerweather millions seems now to be finally and conclusively sustained.

In 1884, Mr. Fayerweather, who was a millionaire leather merchant of New York, made his last will and testament, by which he bequeathed to twenty colleges amounts aggregating \$2,100,000. These colleges were Bowdoin, Dartmouth, Williams, Amherst, Wesleyan, Yale, Columbia, Union Theological, Hamilton, Rochester, Cornell, Lafayette, Lincoln, Virginia, Hampton, Maryville, Marietta, Adelbert, Wabash, and Park. At that time his estate amounted to about three millions of dollars, and at the time of his death to from five to six millions. At various times prior to the death of Mr. Fayerweather, which occurred in 1890, this will was altered, and several codicils were added, these definite bequests to the twenty colleges, however, remaining unchanged; and no question was ever raised as to this part of the will. The dispute related to the disposition of the residuary estate, which aggregated about \$3,500,000.

It was Mr. Fayerweather's desire to give the great bulk of his estate to literary and benevolent institutions, and chiefly to the aforementioned twenty colleges, but a statute of the state of New York prohibited a testator, who had a wife living, from so disposing of more than half of his property. To avoid the effect of this statute, and cut off his wife's right to contest his will under its provisions, he bequeathed the residuary estate absolutely to three of his friends, Justus L. Bulkley, Thomas G. Ritch, and Henry B. Vaughan, who were also named as executors, with the suggestion in his will that they should use the same in carrying out his intentions.

After Mr. Fayerweather's death, the three residuary devisees and legatees proceeded to dispose of the property left to them. They gave certain small portions to Mrs. Fayerweather and to the three nieces of the testator, in consideration of the execution by them of releases in full of all claims against the estate or the residuary holders thereof. The rest they gave to various individuals, hospitals and colleges, some of the latter being among the twenty otherwise provided for.

But some of the twenty colleges were not satisfied, and brought suit in the Supreme Court of the state of New York against the executors, the heirs of Mr. Fayerweather, and all the other institutions and individuals claiming an interest in the estate, alleging that the bequest to the executors was made in pursuance of an agreement that they should take that residue in trust for the twenty colleges enumerated in the will. The donees of the executors appeared and asserted the validity of their claims, and the executors of Mrs. Fayerweather and the three nieces filed an answer and counterclaim, alleging that the releases had been fraudulently obtained, that the secret trust which the colleges were seeking to enforce was therefore void under the statute, and that the residue belonged to the heirs.

This suit was commenced in 1894. *Trustees of Amherst College v. Ritch*, 31 N. Y. Supp. 885. JUDGE TRUAX, sitting at special term, sustained the colleges, and decreed that the residuary estate was held by the executors in trust for the twenty colleges mentioned in the will and for Northwestern University. As for the question of the fraudulent character of the releases, he held that it was unnecessary to consider it, and thereby gave occasion for all the subsequent litigation in the federal courts.

On appeal to the General Term the case was affirmed. *Trustees v. Ritch* (1895), 91 Hun. 509. A further appeal was taken to the Court of Appeals, where the decision was again affirmed. *Trustees of Amherst College v. Ritch* (1897), 151 N. Y. 282. A motion was then made to amend the remittitur so as to direct the justice before whom the action was tried to consider evidence concerning the releases of Mrs. Fayerweather and the next of kin, which it was claimed he did not consider, and to pass upon the same, which motion was overruled. 152 N. Y. 627. Finally a motion for a reargument was made, and the same was denied. 152 N. Y. 641. This exhausted the possibilities in the New York courts.

The nieces of Mr. Fayerweather, who were citizens of Iowa, thereupon brought suit in the United States Circuit Court for the Southern District of New York, setting up in their bill the proceedings in the New York courts, and alleging that the issue of fraud as to the releases had not been tried and

the proceedings did not, therefore, constitute due process of law. *Fayerweather v. Ritch* (1898), 88 Fed. Rep. 713. JUDGE WHEELER decided that the issue of fraud had not been passed upon, that the judgment of the New York courts was therefore not conclusive upon the plaintiffs, and that they had not enjoyed due process of law.

In view of this decision the plaintiffs applied for an injunction restraining the executors from disposing of the residuary estate, which was granted. *Fayerweather v. Ritch* (1898), 89 Fed. Rep. 385. But an appeal was promptly taken from this order, and the United States Circuit Court of Appeals held that the question of fraud in the releases *had* been passed upon by the New York court and that the plaintiffs were *not* deprived of due process of law, and the order was reversed. *Fayerweather v. Ritch* (1899), 91 Fed. Rep. 721.

The plaintiffs next moved for leave to amend their bill, which was granted. *Fayerweather v. Ritch* (1899), 94 Fed. Rep. 1021. On appeal to the United States Circuit Court of Appeals this order was sustained. *Fayerweather v. Ritch*, 97 Fed. Rep. 982. The case then came on for trial upon the amended bill and cross bill, and JUDGE LACOMBE held that while it might be difficult to follow the reasoning by which the United States Circuit Court of Appeals had decided that the releases were valid, yet "that conclusion certainly was reached, and was expressed with no uncertain sound." And the pleas of former adjudication were sustained. *Fayerweather v. Trustees of Hamilton College* (1900), 103 Fed. Rep. 546; *Fayerweather Will Cases* (1900), 103 Fed. Rep. 548. On final hearing this position was adhered to. *Fayerweather Will Cases* (1902), 118 Fed. Rep. 943.

The only remaining chance for the plaintiffs lay in an appeal directly to the Supreme Court of the United States, and such an appeal was taken from the decision of the Circuit Court on final hearing. It is the decision on this appeal which has just been rendered. The direct appeal was sustained on the ground that the question of due process of law was involved, notwithstanding that all the forms of legal procedure in force under the laws of New York had been observed. But upon the merits of the case the United States Supreme Court agreed with the United States Circuit Court of Appeals, and held that the pleas of *res judicata* were properly sustained. Mr. JUSTICE BREWER, who spoke for the court, pointed out that under the well settled rule, a former judgment was a bar to a subsequent action upon the *same claim* not only as to all matters actually litigated but also as to all matters which might have been litigated. And inasmuch as the trial judge in the New York court could not have rendered judgment for the colleges without finding that the releases were valid, it must be presumed that he did so find, notwithstanding his statement that he deemed it unnecessary to consider that question. Furthermore, the General Term and the Court of Appeals both referred to the releases in their opinions, and assumed that on the record the releases appeared valid; and the entire evidence taken at the trial was carried on appeal to the General Term and was before it when it rendered its decision. Under these circumstances the pleas were held to have been properly sustained and the decree of the Circuit Court was affirmed. All the justices concurred except Mr. CHIEF JUSTICE FULLER, who took no part in the case, since he was an overseer of Bowdoin College.